
HOUSE BILL 2409

State of Washington

54th Legislature

1996 Regular Session

By Representatives Reams, Scott, Goldsmith, Honeyford, Beeksma, D. Schmidt, Elliot, Johnson, Hymes, Costa, Thompson, McMahan and Benton

Read first time 01/10/96. Referred to Committee on Government Operations.

1 AN ACT Relating to growth management hearings boards; amending RCW
2 36.70A.020, 36.70A.250, 36.70A.270, 36.70A.280, 36.70A.290, 36.70A.300,
3 36.70A.310, and 36.70A.320; adding new sections to chapter 36.70A RCW;
4 and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that the scope and
7 breadth of decisions by the three growth management hearings boards
8 exceed legislative intent for review of local growth management choices
9 resulting in erosion of the confidence of the public and of locally
10 elected officials in growth management planning. The legislature finds
11 that many decisions by growth management hearings boards have not
12 accorded adequate deference to planning choices made by counties and
13 cities. The legislature restates its intention that implementation of
14 the growth management act focus on locally developed and locally
15 implemented strategies to manage population growth, rather than
16 planning based on decisions made at the state or regional level. The
17 purpose of this act is to reaffirm the validity of local decisions in
18 growth management planning and to clarify the role of the state and the
19 boards in the review and appeal of local plans and regulations.

1 **Sec. 2.** RCW 36.70A.020 and 1990 1st ex.s. c 17 s 2 are each
2 amended to read as follows:

3 The following goals are adopted to guide the development and
4 adoption of comprehensive plans and development regulations of those
5 counties and cities that are required or choose to plan under RCW
6 36.70A.040. The following goals are not listed in order of priority
7 and it shall be the responsibility of each county and city planning
8 under this chapter to determine how to prioritize and balance these
9 goals. The goals shall be used exclusively for the purpose of guiding
10 the development of comprehensive plans and development regulations:

11 (1) Urban growth. Encourage development in urban areas where
12 adequate public facilities and services exist or can be provided in an
13 efficient manner.

14 (2) Reduce sprawl. Reduce the inappropriate conversion of
15 undeveloped land into sprawling, low-density development.

16 (3) Transportation. Encourage efficient multimodal transportation
17 systems that are based on regional priorities and coordinated with
18 county and city comprehensive plans.

19 (4) Housing. Encourage the availability of affordable housing to
20 all economic segments of the population of this state, promote a
21 variety of residential densities and housing types, and encourage
22 preservation of existing housing stock.

23 (5) Economic development. Encourage economic development
24 throughout the state that is consistent with adopted comprehensive
25 plans, promote economic opportunity for all citizens of this state,
26 especially for unemployed and for disadvantaged persons, and encourage
27 growth in areas experiencing insufficient economic growth, all within
28 the capacities of the state's natural resources, public services, and
29 public facilities.

30 (6) Property rights. Private property shall not be taken for
31 public use without just compensation having been made. The property
32 rights of landowners shall be protected from arbitrary and
33 discriminatory actions.

34 (7) Permits. Applications for both state and local government
35 permits should be processed in a timely and fair manner to ensure
36 predictability.

37 (8) Natural resource industries. Maintain and enhance natural
38 resource-based industries, including productive timber, agricultural,
39 and fisheries industries. Encourage the conservation of productive

1 forest lands and productive agricultural lands, and discourage
2 incompatible uses.

3 (9) Open space and recreation. Encourage the retention of open
4 space and development of recreational opportunities, conserve fish and
5 wildlife habitat, increase access to natural resource lands and water,
6 and develop parks.

7 (10) Environment. Protect the environment and enhance the state's
8 high quality of life, including air and water quality, and the
9 availability of water.

10 (11) Citizen participation and coordination. Encourage the
11 involvement of citizens in the planning process and ensure coordination
12 between communities and jurisdictions to reconcile conflicts.

13 (12) Public facilities and services. Ensure that those public
14 facilities and services necessary to support development shall be
15 adequate to serve the development at the time the development is
16 available for occupancy and use without decreasing current service
17 levels below locally established minimum standards.

18 (13) Historic preservation. Identify and encourage the
19 preservation of lands, sites, and structures, that have historical or
20 archaeological significance.

21 **Sec. 3.** RCW 36.70A.250 and 1994 c 249 s 29 are each amended to
22 read as follows:

23 (1) There are hereby created three growth management hearings
24 boards for the state of Washington. Each board is a quasi-judicial
25 body. The boards shall be established as follows:

26 (a) An Eastern Washington board with jurisdictional boundaries
27 including all counties that are required to or choose to plan under RCW
28 36.70A.040 and are located east of the crest of the Cascade mountains;

29 (b) A Central Puget Sound board with jurisdictional boundaries
30 including King, Pierce, Snohomish, and Kitsap counties; and

31 (c) A Western Washington board with jurisdictional boundaries
32 including all counties that are required or choose to plan under RCW
33 36.70A.040 and are located west of the crest of the Cascade mountains
34 and are not included in the Central Puget Sound board jurisdictional
35 boundaries. Skamania county, should it be required or choose to plan
36 under RCW 36.70A.040, may elect to be included within the
37 jurisdictional boundaries of either the Western or Eastern board.

1 (2) Each board shall only hear matters pertaining to the cities and
2 counties located within its jurisdictional boundaries.

3 **Sec. 4.** RCW 36.70A.270 and 1994 c 257 s 1 are each amended to read
4 as follows:

5 Each growth ((~~planning~~)) management hearings board shall be
6 governed by the following rules on conduct and procedure:

7 (1) Any board member may be removed for inefficiency, malfeasance,
8 and misfeasance in office, under specific written charges filed by the
9 governor. The governor shall transmit such written charges to the
10 member accused and the chief justice of the supreme court. The chief
11 justice shall thereupon designate a tribunal composed of three judges
12 of the superior court to hear and adjudicate the charges. Removal of
13 any member of a board by the tribunal shall disqualify such member for
14 reappointment.

15 (2) Each board member shall receive reimbursement for travel
16 expenses incurred in the discharge of his or her duties in accordance
17 with RCW 43.03.050 and 43.03.060. If it is determined that the review
18 boards shall operate on a full-time basis, each member shall receive an
19 annual salary to be determined by the governor pursuant to RCW
20 43.03.040. If it is determined that a review board shall operate on a
21 part-time basis, each member shall receive compensation pursuant to RCW
22 43.03.250, provided such amount shall not exceed the amount that would
23 be set if they were a full-time board member. The principal office of
24 each board shall be located by the governor within the jurisdictional
25 boundaries of each board. The boards shall operate on either a part-
26 time or full-time basis, as determined by the governor.

27 (3) Each board member shall not: (a) Be a candidate for or hold
28 any other public office or trust; (b) engage in any occupation or
29 business interfering with or inconsistent with his or her duty as a
30 board member; and (c) for a period of one year after the termination of
31 his or her board membership, act in a representative capacity before
32 the board on any matter.

33 (4) A majority of each board shall constitute a quorum for making
34 orders or decisions, adopting rules necessary for the conduct of its
35 powers and duties, or transacting other official business, and may act
36 even though one position of the board is vacant. One or more members
37 may hold hearings and take testimony to be reported for action by the
38 board when authorized by rule or order of the board. The board shall

1 perform all the powers and duties specified in this chapter or as
2 otherwise provided by law.

3 (5) The board may appoint one or more hearing examiners to assist
4 the board in its hearing function, to make conclusions of law and
5 findings of fact and, if requested by the board, to make
6 recommendations to the board for decisions in cases before the board.
7 Such hearing examiners must have demonstrated knowledge of land use
8 planning and law. The boards shall specify in their joint rules of
9 practice and procedure, as required by subsection (7) of this section,
10 the procedure and criteria to be employed for designating hearing
11 examiners as a presiding officer. Hearing examiners selected by a
12 board shall meet the requirements of subsection (3) of this section.
13 The findings and conclusions of the hearing examiner shall not become
14 final until they have been formally approved by the board. This
15 authorization to use hearing examiners does not waive the requirement
16 of RCW 36.70A.300 that final orders be issued within one hundred eighty
17 days of board receipt of a petition.

18 (6) Each board shall make findings of fact and prepare a written
19 decision in each case decided by it, and such findings and decision
20 shall be effective upon being signed by two or more members of the
21 board and upon being filed at the board's principal office, and shall
22 be open for public inspection at all reasonable times.

23 (7) All proceedings before the board, any of its members, or a
24 hearing examiner appointed by the board shall be conducted in
25 accordance with such administrative rules of practice and procedure as
26 the boards jointly prescribe. All three boards shall jointly meet to
27 develop and adopt joint rules of practice and procedure, including
28 rules regarding expeditious and summary disposition of appeals. The
29 boards shall develop and adopt an abbreviated process for procedural
30 challenges, including compliance with deadlines before which a county
31 or city must act. The boards shall publish such rules and arrange for
32 the reasonable distribution of the rules. The administrative procedure
33 act, chapter 34.05 RCW, shall govern the administrative rules of
34 practice and procedure adopted by the boards.

35 (8) A board member or hearing examiner is subject to
36 disqualification for bias, prejudice, interest, or any other cause for
37 which a judge is disqualified. The joint rules of practice of the
38 boards shall establish procedures by which a party to a hearing
39 conducted before the board may file with the board a motion to

1 disqualify, with supporting affidavit, against a board member or
2 hearing examiner assigned to preside at the hearing.

3 (9) The members of the boards shall meet jointly on at least an
4 annual basis with the objective of sharing information that promotes
5 the goals and purposes of this chapter.

6 **Sec. 5.** RCW 36.70A.280 and 1995 c 347 s 108 are each amended to
7 read as follows:

8 (1) A growth management hearings board shall hear and determine
9 only those petitions alleging either:

10 (a) That a state agency, county, or city planning under this
11 chapter is not in compliance with the requirements of this chapter,
12 chapter 90.58 RCW as it relates to the adoption of shoreline master
13 programs or amendments thereto, or chapter 43.21C RCW as it relates to
14 plans, development regulations, or amendments, adopted under RCW
15 36.70A.040 or chapter 90.58 RCW; or

16 (b) That the twenty-year growth management planning population
17 projections adopted by the office of financial management pursuant to
18 RCW 43.62.035 should be adjusted.

19 (2) A petition may be filed only by the state, a county or city
20 that plans under this chapter, or by a person who has either appeared
21 before the county or city regarding the matter on which a review is
22 being requested and can demonstrate a clear connection between his or
23 her personal interests and the impact of the action of the county or
24 city or is certified by the governor within sixty days of filing the
25 request with the board(~~(, or a person qualified pursuant to RCW~~
26 ~~34.05.530))~~).

27 (3) For purposes of this section "person" means any individual,
28 partnership, corporation, association, governmental subdivision or unit
29 thereof, or public or private organization or entity of any character.

30 (4) When considering a possible adjustment to a growth management
31 planning population projection prepared by the office of financial
32 management, a board shall consider the implications of any such
33 adjustment to the population forecast for the entire state.

34 The rationale for any adjustment that is adopted by a board must be
35 documented and filed with the office of financial management within ten
36 working days after adoption.

37 If adjusted by a board, a county growth management planning
38 population projection shall only be used for the planning purposes set

1 forth in this chapter and shall be known as a "board adjusted
2 population projection". None of these changes shall affect the
3 official state and county population forecasts prepared by the office
4 of financial management, which shall continue to be used for state
5 budget and planning purposes.

6 **Sec. 6.** RCW 36.70A.290 and 1995 c 347 s 109 are each amended to
7 read as follows:

8 (1) All requests for review to a growth management hearings board
9 shall be initiated by filing a petition that includes a detailed
10 statement of issues presented for resolution by the board.

11 (2) All petitions relating to whether or not an adopted
12 comprehensive plan, development regulation, or permanent amendment
13 thereto, is in compliance with the goals and requirements of this
14 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days
15 after publication by the legislative bodies of the county or city.

16 (a) Except as provided in (c) of this subsection, the date of
17 publication for a city shall be the date the city publishes the
18 ordinance, or summary of the ordinance, adopting the comprehensive plan
19 or development regulations, or amendment thereto, as is required to be
20 published.

21 (b) Promptly after adoption, a county shall publish a notice that
22 it has adopted the comprehensive plan or development regulations, or
23 amendment thereto.

24 Except as provided in (c) of this subsection, for purposes of this
25 section the date of publication for a county shall be the date the
26 county publishes the notice that it has adopted the comprehensive plan
27 or development regulations, or amendment thereto.

28 (c) For local governments planning under RCW 36.70A.040, promptly
29 after approval or disapproval of a local government s shoreline master
30 program or amendment thereto by the department of ecology as provided
31 in RCW 90.58.090, the local government shall publish a notice that the
32 shoreline master program or amendment thereto has been approved or
33 disapproved by the department of ecology. For purposes of this
34 section, the date of publication for the adoption or amendment of a
35 shoreline master program is the date the local government publishes
36 notice that the shoreline master program or amendment thereto has been
37 approved or disapproved by the department of ecology.

1 (3) Unless the board dismisses the petition as frivolous or finds
2 that the person filing the petition lacks standing, the board shall,
3 within ten days of receipt of the petition, set a time for hearing the
4 matter.

5 (4) The board shall base its decision on the record developed by
6 the city, county, or the state and supplemented with additional
7 evidence if the board determines that such additional evidence would be
8 necessary or of substantial assistance to the board in reaching its
9 decision.

10 (5) The board, shall consolidate, when appropriate, all petitions
11 involving the review of the same comprehensive plan or the same
12 development regulation or regulations.

13 (6) In order to facilitate timely action on subsequent requirements
14 of this chapter, the board shall assign highest priority to petitions
15 involving a challenge to county-wide planning policies and make every
16 effort to issue decisions on county-wide planning policies in less than
17 one hundred eighty days.

18 **Sec. 7.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
19 read as follows:

20 (1) The board shall issue a final order within one hundred eighty
21 days of receipt of the petition for review, or, when multiple petitions
22 are filed, within one hundred eighty days of receipt of the last
23 petition that is consolidated. Such a final order shall be based
24 exclusively on whether or not a state agency, county, or city is in
25 compliance with the requirements of this chapter, chapter 90.58 RCW as
26 it relates to adoption or amendment of shoreline master programs, or
27 chapter 43.21C RCW as it relates to plans, development regulations, and
28 amendments thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW.
29 In the final order, the board shall either: (a) Find that the state
30 agency, county, or city is in compliance with the requirements of this
31 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
32 of shoreline master programs; or (b) find that the state agency,
33 county, or city is not in compliance with the requirements of this
34 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
35 of shoreline master programs, in which case the board shall remand the
36 matter to the affected state agency, county, or city and specify a
37 reasonable time not in excess of one hundred eighty days within which

1 the state agency, county, or city shall comply with the requirements of
2 this chapter.

3 (2) A finding of noncompliance and an order of remand shall not
4 affect the validity of comprehensive plans and development regulations
5 adopted under this chapter during the period of remand, unless the
6 board's final order also:

7 (a) Includes a determination, supported by findings of fact and
8 conclusions of law, that the continued validity of the plan or
9 regulation would substantially interfere with the fulfillment of the
10 goals of this chapter; and

11 (b) Specifies the particular part or parts of the plan or
12 regulation that are determined to be invalid, and the reasons for their
13 invalidity.

14 (3) A determination of invalidity shall:

15 (a) Be prospective in effect and shall not extinguish rights that
16 vested under state or local law before the date of the board's order;
17 and

18 (b) Subject any development application that would otherwise vest
19 after the date of the board's order to the local ordinance or
20 resolution that both is enacted in response to the order of remand and
21 determined by the board pursuant to RCW 36.70A.330 to comply with the
22 requirements of this chapter.

23 (4) If the ordinance that adopts a plan or development regulation
24 under this chapter includes a savings clause intended to revive prior
25 policies or regulations in the event the new plan or regulations are
26 determined to be invalid, the board shall determine under subsection
27 (2) of this section whether the prior policies or regulations are valid
28 during the period of remand.

29 (5) Any party aggrieved by a final decision of the hearings board
30 may appeal the decision to superior court as provided in RCW 34.05.514
31 or 36.01.050 within thirty days of the final order of the board.

32 **Sec. 8.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to
33 read as follows:

34 (1) A request for review by the state to a growth management
35 hearings board may be made only by the governor, or with the governor's
36 consent the head of an agency, or by the commissioner of public lands
37 as relating to state trust lands, for the review of whether: ((+1))

38 (a) A county or city that is required or chooses to plan under RCW

1 36.70A.040 has failed to adopt a comprehensive plan or development
2 regulations, or county-wide planning policies within the time limits
3 established by this chapter; or ~~((+2))~~ (b) a county or city that is
4 required or chooses to plan under this chapter has adopted a
5 comprehensive plan, development regulations, or county-wide planning
6 policies, that are not in compliance with the requirements of this
7 chapter.

8 (2) Except as provided in subsection (1) of this section with
9 regard to state trust lands, a state agency may be authorized to seek
10 review by a growth management hearings board only if the governor finds
11 that the agency has participated substantially in the local process,
12 and has in oral or written testimony raised the issues included in the
13 petition for review.

14 **Sec. 9.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
15 read as follows:

16 (1)(a) Except as provided in subsection (2) of this section,
17 designations, comprehensive plans ~~((and))~~, development regulations,
18 other actions required under this chapter, and amendments thereto,
19 adopted under this chapter are presumed valid upon adoption. In any
20 petition under this chapter, the board, after full consideration of the
21 petition, shall determine whether there is compliance with the
22 requirements of this chapter. In making its determination, the board
23 shall consider the criteria adopted by the department under RCW
24 36.70A.190(4). The board shall uphold a decision by a county or city
25 made in reliance on the procedural criteria but shall not use those
26 criteria as a minimum which must be adopted by a county or city.

27 (b) The board shall find compliance by the county or city unless it
28 finds ~~((by a preponderance of the evidence that the state agency,~~
29 county, or city erroneously interpreted or applied)) that the
30 designation or adoption either: (i) Was predicated upon an
31 interpretation of this chapter or chapter 43.21C RCW that is clearly
32 erroneous; or (ii) is not supported by substantial evidence. The board
33 shall not substitute its judgment for that of county or city elected
34 officials and shall defer to decisions by county and city officials on
35 matters not specifically addressed in this chapter. When determining
36 whether a comprehensive plan is in compliance with the requirements of
37 this chapter, the board shall find compliance if the plan as a whole
38 satisfies the goals of this chapter.

1 (c) In making its determination, the board shall take into
2 consideration the population of the county or city and its extent of
3 urbanization, the planning history and capabilities of the county or
4 city, and the relative amount of financial assistance made available to
5 the county or city by the state for purposes of complying with the
6 planning and infrastructure requirements of this chapter.

7 (d) A board may excuse a county or city from compliance with the
8 requirements of this chapter that are unnecessary to satisfy the goals
9 of this chapter and may also excuse a county or city from compliance
10 with deadlines established by this chapter.

11 (2) The shoreline element of a comprehensive plan and the
12 applicable development regulations adopted by a county or city shall
13 take effect as provided in chapter 90.58 RCW.

14 NEW SECTION. Sec. 10. A new section is added to chapter 36.70A
15 RCW to read as follows:

16 A board shall not enter a finding of noncompliance with deadlines
17 before which a county or city must act, whether established under this
18 chapter or by a board order, when the county and the cities within the
19 county have adopted an agreement that establishes a different deadline
20 in recognition of unique local circumstances.

21 NEW SECTION. Sec. 11. A new section is added to chapter 36.70A
22 RCW to read as follows:

23 The office of the attorney general shall, at the request of a
24 county or city that has been found in compliance with this chapter by
25 a growth management hearings board, defend or provide legal assistance,
26 either directly or in the form of reimbursement, in the county's or
27 city's legal defense of any appeal of a board final decision in
28 superior or appellate court.

--- END ---